
(1981) 11 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Petition No. 1004 of 1981

Kanta Prasad

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-11-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 15
Rajasthan Tenancy Act, 1955 — Section 30B

Citation : AIR 1982 Raj 136 : (1982) RLW 38 : (1981) WLN 433

Hon'ble Judges : P.D. Kudal, J; N.M. Kasliwal, J

Bench : Division Bench

Advocate : A.K. Bhandari, for the Appellant; M.I. Khan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Kasliwal, J.

A ceiling proceeding under chap. III-B of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as the Act) was initiated against Shri Bajrang Lal, father of the petitioner. Shri Bajrang Lal submitted a declaration showing himself, his wife, son and mother as members of his family. Bajrang Lal also took the plea that he had sold 18 biswas of land to Kishore and Ram Narain and as such the aforesaid land should be excluded. Bajrang Lal further took the plea that he had handed over possession of certain portions of agricultural land to his mother and the son. Learned S. D. O. Baran, in his judgment, Annexure-4 dated 31-10-75 held that according to the declaration made by Bajrang Lal, there were four members in his family. As regards the sale made in favour of Kishore and Ram Narain, neither any document nor any other evidence was produced. He further held that no document was produced to show that possession was handed over to the mother and the son. He further found that the son Kanta Prasad was minor and the mother came within the definition of family. In view of the aforesaid findings, the learned S. D. O. held that Bajrang Lal was entitled to keep

30 standard acres of land and declared 28 standard acres of land in excess. Aggrieved against the aforesaid judgment of the S. D. O., Bajrang Lal filed an appeal before the Revenue Appellate Authority. The learned Revenue Appellate Authority upheld the order of the S.D.O. and dismissed the appeal. Thereafter, two revisions were filed before the Board of Revenue, one by Mst. Keshar widow of Gajanand (mother of Bajrang Lal) and Kanta Prasad son of Bajrang Lal and the other by Bajrang Lal.

It was argued before the Board of Revenue that the land was ancestral property, the widowed mother was entitled to be considered as a separate unit, Mst. Keshar and Kanta Prasad were possessing separate holdings and their land ought not to have been clubbed with that of Bajrang Lal. It was further submitted that the mother cannot be dependent on the son and she was in possession of land in her own right. The declaration made by Bajrang Lal that the widowed mother was dependent on him was done inadvertently and there was no estoppel in withdrawing the said declaration. The Board of Revenue by its judgment dated 12-12-1978, did not agree with the aforesaid contentions of the petitioner and found that Bajrang Lal had made a declaration on oath, in which mother had been shown as dependent on him. Minor sons and mother both were shown as dependants, as such no separate land could be given for them. In the result both the revisions were rejected and the judgment of the Revenue Appellate Authority was affirmed. Two review petitions were then filed against the judgment of Board of Revenue, dated 12-12-1978, but the same were also dismissed by the Board by its order, dated Jan, 30, 1981.

2. Aggrieved against the aforesaid decisions of the Board of Revenue, Kanta Prasad son of Bajrang Lal has filed the present writ petition.

3. The only point urged by Mr. Bhan-dari, learned counsel for the petitioner is that the land of Smt. Keshar could not be clubbed with the land of her son Bajrang Lal. It is contended that Smt. Keshar was holding the land separately in her own right and was not dependent on her son and was entitled to be treated as a separate unit. It was contended that the term "Family" is defined in Section 30-B (a) of Chapter III-B of the Act is ultra vires of Articles 14 and 15 of the Constitution of India and is liable to be struck down. In this regard, it was further contended that the inclusion of the land of the widowed mother of the husband so dependent in the definition of family was violative of Article 14 as it was discriminatory on the ground of sex and was therefore, violative of Article 15. There was no reason or justification for including widowed mother in this definition while excluding an old father even if he was dependent. It was argued that the definition of family discriminated between men and women and did not give equal protection to the women. An old and dependent father has not been included in the family and he is allowed to retain his holding as a separate unit, whereas a dependent widowed mother of the husband under similar circumstances is not entitled to keep land as a separate unit. There is no rational nexus with the object to be achieved in creating this hostile discrimination on the

ground of sex, Reliance is placed on *Ambika Prasad T. State of U. P.*, : AIR 1980 SC 1762.

4. We have given our careful consideration to the arguments advanced by Mr. Bhandari. There is a concurrent finding of all the Revenue Courts that the land in question is not an ancestral land. Bajrang Lal in his declaration before the S. D. O. had shown four members of his family, in which he had described Mst. Keshar, his widowed mother as dependent on him, Kanta Prasad, the petitioner has also been found as a minor son dependent on Bajrang Lal and a member of his family. These findings of fact cannot be assailed in a petition under Article 226 of the Constitution of India. The only point, thus which remains to be considered is about the validity of definition of family given under the Act. Section 30B (a) of the Act clearly defines as under :--

" "Family" shall mean a family consisting of a husband and wife, their children and grand-children being dependent on them and the widowed mother of the husband so dependent."

A widowed mother of the husband so dependent has been in the definition of family. The above definition has been challenged on the ground of discrimination on the basis of sex. The provisions of ceiling law forbid excessive holdings having regard to the rural realities of the agricultural life. "Family" is defined because it is taken as a unit for holding land. It is only a tool of social engineering in working out the scheme of setting limits of ownership. It does not confer nor withdraw any property from a person. If a woman has her own land not dependent on a male member, this legislation does not deprive her of such property. We cannot lose sight of the social conditions prevailing in our country that an old mother without having any source of income has to remain dependent on her son, if her husband is not alive. In such a situation, if she is regarded as a member of the son's family, no fault can be found in such a law on the ground of discrimination. Taking into consideration the basic structure of the Hindu society the position of a father who is normally a head of the family is not treated as a member of the sons' family, on the contrary a son is treated a member of the father's family. Thus, there is a basic distinction between father and the widowed mother and thus there is a reasonable basis for maintaining this distinction in the definition of family, for the purpose of ceiling law. There is a clear fallacy in the argument of Mr. Bhandari that by the above definition of the family, a dependent widowed mother loses her agricultural land, while the father in similar circumstances does not lose such land.

In our opinion, if an agricultural land is recorded in the Khatedari of a widow independently in her own right which is sufficient to maintain her, such land will not be clubbed with the land of her son and she can be treated as a separate unit for the purpose of Ceiling Law.

5. In the present case, it has been held by all the Revenue Courts that the entire land was recorded in the Khatedari of Bajrang Lal and when the question arose

as to who were the members of this family, he himself made a declaration that apart from himself, his wife, his minor son Kanta Prasad and his widowed mother dependent on him were the members of his family. The question for determination was as to who should be treated as the members of his family and how much land he was entitled to retain. According to the ceiling law a family consisting of 5 or less than 5 members was entitled to keep 30 standard acres of land. Where the members of the family exceeds 5, the ceiling area is increased for each additional member by 5 standard acres, however not exceeding 60 acres in any case,

6. We are unable to understand as to how Shri Bajrang Lal was going to lose in case his widowed mother was included as a member of his family. All the Revenue Courts have also arrived at the conclusion that Bajrang Lal failed to prove that the land in question was ancestral land,

7. The Board of Revenue in its judgment dated 12-12-1978, clearly held that it had also not been proved that the land in question belongs to an undivided joint Hindu family property. It further held that the partitions which had been made were also with view to escape from the provisions of Ceiling Law and the same could not be accepted as valid ones. Mr. Bhandari, learned counsel for the petitioner was unable to show any infirmity in the aforesaid findings of the Board of Revenue. Admittedly, the mutation proceedings recording separately the shares of Bajrang Lal, Mst. Keshar and Kanta Prasad were made vide Annexure-1 in 1971. Such mutation as held by the Board of Revenue cannot be considered as bona fide as it was long after 1-4-1966, which date is relevant for the purpose of determining the ceiling area. Para 25 of the case relied upon by Mr. Bhandari : AIR 1980 SC 1762, renders no assistance to the petitioner, on the contrary it supports the view taken by us. Para 25 is reproduced as under:--

"We wonder whether the Commission on the Status of Women or the Central Government or the State Governments have considered this aspect of sex discrimination in most land reforms laws, but undoubtedly the State would be fair especially to the weaker sex. Adult damsels should not be left in distress by progressive legislations geared to land reforms. This criticism may have bearing on the ethos of the community and the attitude of the legislators, but we are concerned with the constitutionality of the provision. Maybe, in this age of nuclear families and sex equal human rights it is illiberal and contrary to the zeitgeist to hark back to history's dark pages nostalgically and disguise it as the Indian way of life with a view to deprive women of their undeniable half. Articles 14 and 15 and the humane spirit of the Preamble rebel against the de facto denial of proprietary personhood of womanhood. But this legal sentiment, and jural value must not run riot and destroy provisions which do not discriminate between man and woman qua man and woman but merely organise a scheme where life's realism is legislatively pragmatized. Such a scheme may marginally affect gender justice but does not abridge, even a wee-bit, the rights of women. If land-holding and ceiling thereon are organised with the paramount purpose of

maximising surpluses without maiming woman's ownership no submission to destroy this measure can be permitted using sex discrimination as a means to sabotage what is socially desirable. No woman's property is taken away any more than a man's property."

8. In the result, we find no force in the writ petition and the same is dismissed.